

REMARKS

Applicants respectfully request reconsideration of this application, and reconsideration of the Office Action dated October 10, 2003 (Paper No. 15). Claims 1-17 remain pending in this application with claims 14-16 presently withdrawn. The amendments to the claims correct the antecedent basis of certain claim features and are fully supported by the specification and original claims. Thus, Applicants respectfully submit that this Amendment should be entered as it does not present any issues which would require additional search and/or consideration. Furthermore, the changes to the claims are in no way intended to narrow the scope of the claims. No new matter is added by this Amendment.

As an initial matter, Applicants point out that the Office Action dated October 10, 2003 (Paper No. 15) (which was indicated as being a final Office Action on the Office Action Summary) includes a new rejection that was not made as a result of a claim amendment made in the last Amendment. The October 10, 2003 Office Action includes a new rejection under 35 U.S.C. 112, second paragraph, which was not included in the previous Office Action. Specifically, in the rejection it is asserted that the terminology "the rotation" and "an opening direction" in claim 6 and "said clutch" in claim 12 are indefinite. These phrases were not added to these claims via the Amendment preceding the October 10, 2003 Office Action nor were they indicated as being indefinite in a previous Office Action. Hence, this rejection was not made in response to any claim amendment made in the Amendment preceding the October 10, 2003 Office Action. Accordingly, the October 10, 2003 Office Action was improperly made final. See M.P.E.P. § 706.07(a). Withdrawal of the finality of the Office Action is thus respectfully requested.

With respect to the lack of Applicants providing an interview summary of the May 2, 2002 conversation between Applicants' representative and the previous Examiner, Applicants kindly refer to the telephone conversation of October 24, 2003 between Applicants' representative and the current Examiner. During the October 24, 2003 conversation, Applicants' representative

again explained that the substance of the May 2, 2002 has been detailed in previous Amendments. Upon this most recent explanation, Applicants note that Examiner Strimbu appeared to agree that the substance of the May 2, 2002 had been adequately summarized. The Examiner's confirmation is respectfully requested.

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Claims 5-7, 10, and 12 were rejected under 35 U.S.C. § 112, second paragraph, as indefinite.

In preparing this Amendment, Applicants have carefully reviewed the claims, taking into consideration the issues raised by the Examiner in the Office Action. In general, the newly added claims have been prepared in a manner to address the Examiner's concerns regarding the antecedent basis of certain claim features. Applicants also note that claims 10 and 11 were also amended to correct the antecedent basis of the "opening and closing motion" feature. Hence, in view of the above remarks, Applicants respectfully submit the rejection is overcome and its withdrawal is respectfully requested.

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Claims 1 and 2 remain rejected under 35 U.S.C. § 102(b) as purportedly anticipated by German Patent Publication No. 41 24 869 ('869). Applicants again respectfully traverse.

In the Office Action it was asserted that the device described in the '869 document was capable of performing as the claimed invention and thus anticipated the claimed invention. Applicants respectfully submit that the structure of the claimed apparatus is different from the '869 apparatus as discussed below. The '869 document describes a conventional stay which is arranged so as to be oriented in an obliquely upward direction. In addition, when the '869 stay is attached to a rear gate, the stay is exposed to an opening portion side when the rear gate is opened. In contrast, the present invention includes a hinge arm provided for attachment at an upper end of the rear gate so that the rear gate is pivotally connected with the body of the vehicle. In other words, the presently claimed apparatus is designed such that the stay is arranged on a

upper end (i.e. roof portion) of the rear gate with a horizontal orientation. Accordingly, due to the design of applicants apparatus, the stay is not positioned at an opening portion side surface of the rear gate. Thus, when the rear gate is opened, the stay, being arranged on the upper end of the rear gate, is not exposed to the same degree as the '869 stay. If the automatic opening and closing apparatus described in '869 is assembled into the rear gate and having the stay on the roof portion, the apparatus is exposed at the opening portion side surface. This would create an inconvenient obstacle to the user. Thus, as explained above, the structure of the '869 device is different from the structure of the claimed apparatus.

In addition to the above, Applicants restate their arguments presented in the last Amendment. Namely, the '869 document fails to teach or describe an apparatus having: a) a slider suitable for transforming power into a reciprocating motion in the longitudinal direction of the vehicle; b) a mounting base installer suitable for detachably installing the mounting base in a space formed by a rear rail, a side rail and under roof of the vehicle; and c) a gas stay extending in the longitudinal direction of the vehicle provided between the side rail and the hinge arm. The Office Action fails to show which features of the '869 device are capable of performing features a)-c). Thus, the '869 document fails to teach or describe each and every feature of the claimed invention and thus cannot anticipate the claimed invention.

In the view of the above remarks, Applicants respectfully submit that this rejection is overcome. Reconsideration and withdrawal of the rejection is respectfully requested.

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Claims 3, 4, 8, 9, 11-13 and 17 were rejected under 35 U.S.C. § 103(a) as purportedly obvious based on German Patent Publication No. 41 24 869 ('869) in view of Hellinga (U.S. Pat. No. 5,982,126).

Claims 5-7 were rejected under 35 U.S.C. § 103(a) as purportedly obvious based on German Patent Publication No. 41 24 869 ('869) in view of Hellinga, and further in view of Kato (U.S. Pat. No. 5,986,420).

Claim 10 was rejected under 35 U.S.C. § 103(a) as purportedly obvious based on German Patent Publication No. 41 24 869 ('869) in view of Hellinga, and further in view of Kowall et al. (U.S. Pat. No. 5,563,483).

These three rejections are addressed together as similar issues apply to all three. Furthermore, Applicants respectfully traverse each rejection.

The deficiencies of the '869 document are discussed above. None of the secondary reference cited in the above three rejections remedy the deficiencies of the '869 document. None of the cited prior art documents teach or fairly suggest a rear gate opening and closing apparatus having all of the recited claim features. Moreover, there is nothing in the prior art of record which would have motivated one of ordinary skill in the art to modify the teachings of the prior art by employing the features of the present invention discussed above.

In the view of the above remarks, Applicants respectfully submit that each of these three rejections is overcome. Reconsideration and withdrawal of all three rejections are respectfully requested.

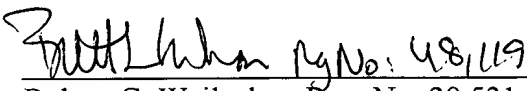
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Applicants respectfully submit that this Amendment and the above remarks obviate the outstanding rejections in this case, thereby placing the application in condition for immediate allowance. Allowance of this application is earnestly solicited.

If any fees are due in connection with the filing of this Amendment, such as fees under 37 C.F.R. §§1.16 or 1.17, please charge the fees to Deposit Account 02-4300; Order No. 032405.0061.

Respectfully submitted,

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Dated: January 9, 2004
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